

STATE OF MICHIGAN
COURT OF APPEALS

CHARTER TOWNSHIP OF YPSILANTI,

Plaintiff-Appellant/Counter-
Defendant-Cross-Appellee,

v

KEITH E. BRAGG, ROSIE WILLIAMSON,
AACHEN AUTO KEB, INC., d/b/a ACTION
AUTO, ACCEPTING ALL AUTOS, AACHEN,
INC., AACHEN RETAIL, AACHEN SURPLUS,
AACHEN AUTO, AAA AACHEN, INC., AAAA
AACHEN RETAIL, AAAA AACHEN
SURPLUS, AAAA AACHEN AUTO, and
AAAAAAAAAAAAAAAAAAAAA,

Defendants-Appellees/Counter-
Plaintiffs-Cross-Appellants.

UNPUBLISHED

August 10, 2004

No. 249432

Washtenaw Circuit Court

LC No. 02-000029-CZ

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

PER CURIAM.

In this action to have certain property declared a public nuisance, plaintiff appeals as of right the trial court's order denying plaintiff declaratory and injunctive relief and declaring defendants' use of the property to be a lawful nonconforming use. On cross-appeal, defendants challenge the trial court's ruling that plaintiff's action was not frivolous under MCL 600.2591. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In this case, plaintiff sought to have defendants' automobile storage and dismantling operation declared a public nuisance because automobile storage and dismantling was not a permitted use of the property under plaintiff's zoning ordinance. In a counterclaim, defendants requested, among other things, that the trial court declare their automobile storage and dismantling operation on the property to be a lawful nonconforming use because defendants' predecessor in title had operated a junkyard on the property where automobiles, as well as many other things, were stored and dismantled since the 1940's.

On appeal, plaintiff argues, in essence, that the trial court's finding that defendants' automobile storage and dismantling operation was a lawful nonconforming use was erroneous because defendant's current business operation materially changed, expanded, and intensified the

prior use of this property. Specifically, plaintiff challenges the trial court's findings by asserting that the evidence established that by focusing primarily on automobiles rather than the predecessor in title's use of the property to store and dismantle a myriad of things, including automobiles, defendants changed the nature of the business, and that defendants also expanded the size of the business. According to plaintiff, by changing the nature and size of the business, defendants' operation is no longer a permissible nonconforming use.

We review a trial court's findings of fact for clear error. MCR 2.613(C). "A finding is clearly erroneous where, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made." *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003).

"A prior nonconforming use is a vested right in the use of particular property that does not conform to zoning restrictions, but is protected because it lawfully existed before the zoning regulation's effective date." *Century Cellunet Of Southern Michigan Cellular Ltd Partnership v Summit Twp*, 250 Mich App 543, 546; 655 NW2d 245 (2002), quoting *Belvidere Twp v Heinze*, 241 Mich App 324, 328; 615 NW2d 250 (2000); MCL 125.583a. In general, nonconforming uses may not be expanded. *Century Cellunet, supra*. In Michigan, "the continuation of a nonconforming use must be substantially of the same size and same essential nature as the use existing at the time of passage of a valid zoning ordinance. ... The nonconforming use is restricted to the area that was nonconforming at the time the ordinance was enacted." *Norton Shores v Carr*, 81 Mich App 715, 720; 265 NW2d 802 (1978) (citations and internal quotations omitted). Abandonment is something more than nonuser; it is that combined with an intention to abandon the right to the nonconforming use and some act or omission on the part of the owner that clearly manifests his voluntary decision to abandon. *Livonia Hotel, LLC v City of Livonia*, 259 Mich App 116, 127-128; 673 NW2d 763 (2003).

Here, in its written opinion, the trial court found that defendants' predecessor in title "stored and dismantled vehicles (and almost everything else) on the property for over 40 years before he sold it to the defendant" and that "defendant has established that the operation of the property as a junkyard, including the storage and dismantling of autos, is a valid nonconforming use that was lawfully in existence prior to the rezoning of the property in 1979." Further, the trial court found that "[t]he use of this property has changed only to the extent that the defendant made significant improvements to the cleanliness and appearance of the property."

With regard to the nature of the business, whether a junkyard focuses exclusively on automobiles or a myriad of things, including automobiles, does not necessarily constitute an essential change in the nature of the business. In other words, generally speaking, a junkyard is a junkyard irrespective of what type of junk is stored or dismantled. And in this case, for the trial court to conclude, in essence, that the change in focus by defendants to automobiles from the focus of defendants' predecessor in title, which was many things, including automobiles, was not change in the nature of the business is not clearly erroneous.

Likewise, we find no clear error in the trial court's finding that defendants did not expand and enlarge the size of the junkyard operation on the property. The evidence established that defendants' predecessor in title's use of the property for storage and dismantling was as extensive a use of the property as defendants' use of the property. The predecessor in title's business apparently utilized the entire property. The only difference between the size of

operation, as the trial court observed, is that defendants improved the appearance and cleanliness of the property.

Further, we find without merit plaintiff's assertions that defendant Keith Bragg, who owns and operates defendant businesses on the property, waived the nonconforming use or that defendants' predecessor in title did not establish a valid nonconforming use in dismantling and processing automobiles. Defendants' significant investment in this operation refutes any suggestion that Bragg waived or abandoned the nonconforming use. Further, as the trial court recognized, the evidence sufficiently established that automobiles were one of the commodities that defendants' predecessor in title stored and dismantled on the property.

Finally, we find without merit defendants' assertion on cross-appeal that the trial court erred in finding that plaintiff's claim was not frivolous. To the contrary, defendants' claim that "[plaintiff] [t]ownship initiated its petition against Bragg for the purpose of harassing and injuring him and his business, and that [plaintiff] [t]ownship had no reasonable basis to believe that the facts underlying its legal position were in fact untrue," is unsupported by the record in this case. The trial court weighed conflicting evidence on many of the relevant factual issues presented and made its findings. The facts being disputed, the trial court's ruling that the complaint in this case was not frivolous is not clearly erroneous. MCR 2.613(C); *Evans & Luptak, PLC v Lizza*, 251 Mich App 187, 203; 650 NW2d 364 (2002).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly